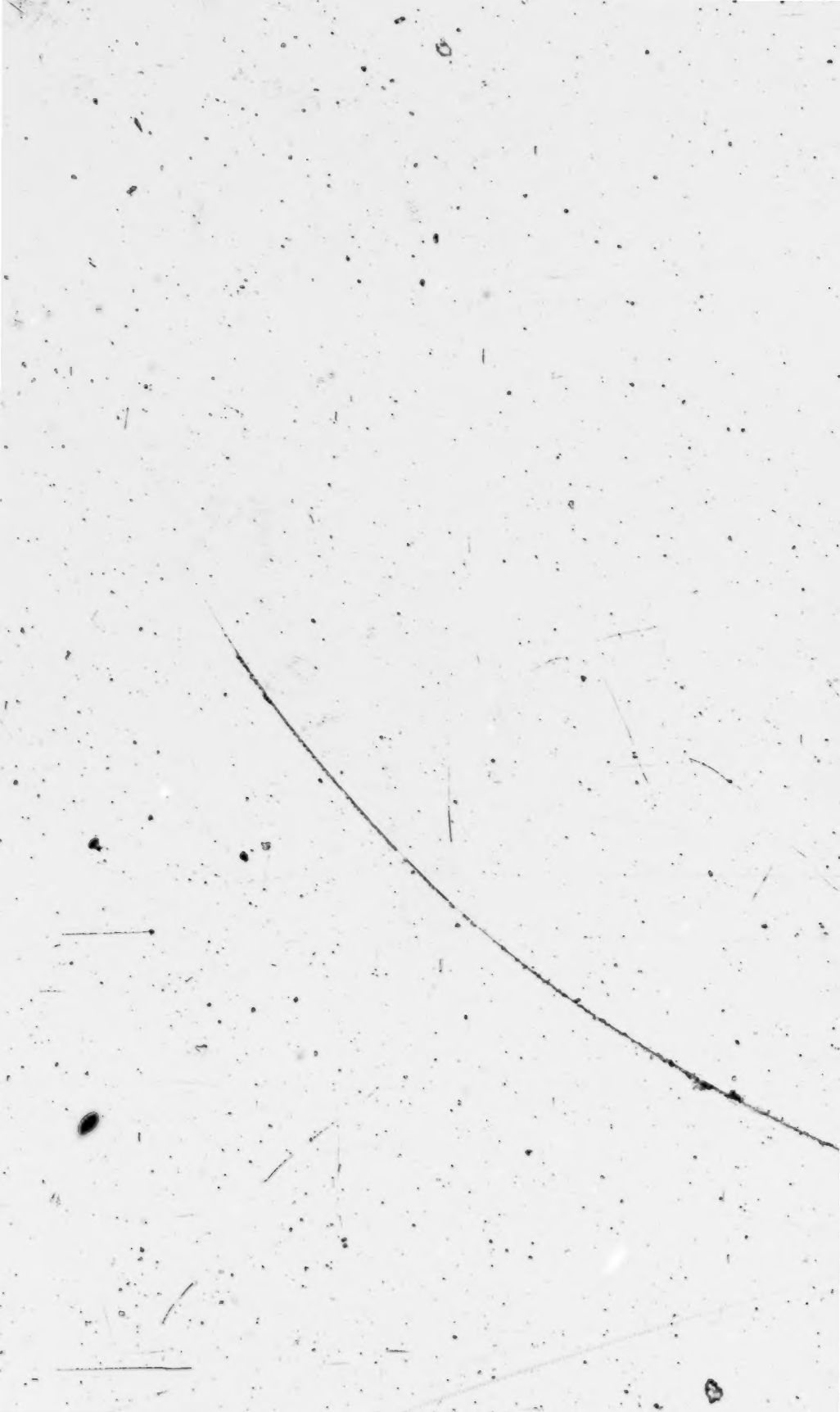

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 13,201 and 13,202

GRAHAME THOMAS SMALLWOOD, JR., et al.,
Appellants

v.

VIOLA A. HODSON, et al., *Appellees*

Appeal from United States District Court for the District of Columbia

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APPENDIX

Filed March 11, 1955

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1098-'55

GRAHAME THOMAS SMALLWOOD, JR., 3200 Sixteenth Street, Northwest, Washington, D. C.,

ELIZABETH S. WIER, 1900 F Street, Northwest, Washington, D. C., and

ELEANOR S. BEASLEY, 3200 Sixteenth Street, Northwest, Washington, D. C., *Defendant.*

vs.

VIOLA A. HODSON, 1805 Quincy Street, Northwest, Washington, D. C., *Defendants.*

Complaint to Set Aside Conveyance and to Require Reconveyance of Real Estate and for Accounting and Money Judgment

1. Jurisdiction is founded on Section 11-306, of the District of Columbia Code, 1951 Edition.

2. On or about the 28th day of December, 1954, one Dorothy Smallwood Geare died leaving surviving her as her only heirs at law and next of kin the plaintiffs herein who were her nephew and nieces.

3. During her lifetime, the said Dorothy Smallwood Geare was seized of the following real estate in the District of Columbia, to wit: Lot 83 in Square 2061, with improvements thereon known as 3047 Porter Street, Northwest, Washington, D. C.

4. On or about the 14th day of April, 1954, a deed purporting to have been executed on or about the 2d day of February, 1954, by the said Dorthy Smallwood Geare and

purporting to convey all of the above-described real property to the defendant, Viola A. Hodson, was recorded among the land records of the District of Columbia in the office of the Recorder of Deeds, in Liber 10174 at Folio 417.

5. At the time of the purported execution and delivery of the said deed and for some time prior thereto, the said Dorothy Smallwood Geare was unable to care for her person, she was incapable of managing her own affairs, she was confused and disoriented, she was not of sound mind and memory and was not capable of making a valid deed or contract.

6. At the time of the purported execution and delivery of the said deed and for some time prior thereto, the said Dorothy Smallwood Geare was living with and was under the domination and control of the defendant and members of her family and household and a confidential relationship existed between her and the defendant, and the purported execution and delivery of the said deed by Dorothy Smallwood Geare were obtained and procured without any consideration and as a result of fraud, deceit, duress, coersion and or undue influence exercised upon her by the defendant or some other person or persons unknown to the plaintiffs.

7. At the time of the purported execution and delivery of the said deed, the above-described real property was subject to a certain deed of trust dated the 3rd day of May, 1946, and recorded the 8th day of May, 1946 in Liber 8264 at Folio 173 of the land records of the District of Columbia, securing payment of an unpaid balance of approximately $5,095.65 including interest of an indebtedness in the original amount of $9,000.00, and on or about July 13, 1954, the defendant paid the said balance of $5,095.65, including accrued interest, from and out of the proceeds of a new loan in the amount of $9,000.00 procured by her and secured by a certain deed of trust on

the above-described real property dated the 8th day of July, 1954, and recorded on the 9th day of July,
3 1954, in Liber 10226 at Folio 475 of the land records of the District of Columbia and as a result the defendant has converted to her own use approximately $4,000.00 of the equity in said real property and, in addition thereto, has received the rents and profits from said real property for a long period of time, the exact period of time and amounts of rents and profits being unknown to the plaintiffs.

8. A certain paper writing also bearing the same date as the said deed; namely, the 2d day of February, 1954, has been filed in the office of the Register of Wills for the District of Columbia, purporting to be the last will and testament of the said Dorothy Smallwood Geare, and a petition for probate of the said will and for letters testamentary have been filed in the probate branch of this court by the defendant herein, the same being Administration No. 87018.

9. A petition for caveat has been filed in the probate branch of this court by the plaintiffs, contesting the probate and validity of the said paper writing. In the event the said paper writing dated the 2d day of February, 1954, is not admitted to probate and record as the last will and testament of the said Dorothy Smallwood Geare, deceased, the above-described real property will descend by operation of law to the plaintiffs.

WHEREFORE, plaintiffs demand judgment for relief as follows:

1. That the deed described in paragraph 4 of this complaint be adjudged null and void and of no effect, except as to the party secured and the trustees named in the deed of trust on the said real property dated the 8th day of July, 1954, and recorded on the 9th day of July, 1954, in Liber 10226 at Folio 475, referred to in paragraph 7 of this complaint, their successors and or assigns.

2. That the defendant be ordered and directed to convey the said real property to the plaintiffs, or that a trustee or trustees be appointed to so convey the said real property.

4 3. That the defendant be ordered and directed to account herein for the difference between the amount of the encumbrance on the said real property on February 2, 1954, and the amount or amounts placed thereon by her.

4. That the defendant be ordered and directed to account herein for the rents and profits from the said real property.

5. That the plaintiffs recover of and from the defendants the difference between the amount of the encumbrance on the said real property on February 2, 1954, and the amount or amounts placed thereon by the defendant and for the rents and profits from the said real property collected by the defendant, and that plaintiffs have execution thereof.

6. And for such other and further relief as to the court may seem meet and proper, the exigencies of the case may require, and the evidence may show the plaintiffs to be entitled.

---

5 Filed June 2, 1955

Answer of Defendant

FIRST DEFENSE

The allegations of the Complaint filed herein fail to state a cause of action for which relief can be granted.

SECOND DEFENSE

Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 of the Complaint.

Defendant admits that Dorothy Smallwood Geare was living with defendant at the time of the execution and delivery of the deed which is the subject of this litigation, but denies all the other allegations of Paragraphs 5 and 6 of the Complaint.

Defendant admits the allegations in Paragraph 7 of the Complaint, but denies the alleged conversion.

Defendant admits the allegations in Paragraphs 8 and 9 of the Complaint.

---

8 Filed June 27, 1955

Order Granting Motion to Consolidate for Joint Trial With Issues Pending in Administration No. 87018

This action came on to be heard upon the motion filed herein by the plaintiffs to consolidate the above-entitled action for a joint trial with the issues pending before the court in Administration No. 87018, entitled In Re Estate of Dorothy Smallwood Geare, Deceased, and thereupon, upon consideration thereof, it is, by the Court, this 27th day of June, 1955, adjudged as follows:

That the said motion be, and the same hereby is, granted and a joint trial of the above-entitled action with the issues pending before the Court in Administration No. 87018, entitled In Re Estate of Dorothy Smallwood Geare, Deceased, is hereby ordered.

R. B. Keech
Judge

---

10 Filed June 27, 1955

Order

This cause came on for hearing on the Motion of Margaret Hynson Studt for Leave to Intervene as a party defendant, and upon consideration thereof, it is by the Court, this 27 day of June, 1955

Ordered, that Intervener's Motion be, and it is hereby granted that the Intervener be named as a party defendant.

R. B. Keech
Judge

11 Filed Aug. 10, 1955

Answer of Defendant

First Defense

The allegations of the Complaint filed herein fail to state a cause of action for which relief can be granted.

Second Defense

Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 of the Complaint.

Defendant admits that Dorothy Smallwood Geare was living with defendant at the time of the execution and delivery of the deed which is the subject of this litigation, but denies all the other allegations of Paragraphs 5 and 6 of the Complaint.

Defendant admits the allegations in Paragraph 7 of the Complaint, but denies the alleged conversion.

Defendant admits the allegations in Paragraphs 8 and 9 of the Complaint.

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14 Filed Dec. 9, 1955

Findings of Fact and Conclusions of Law

FINDINGS OF FACT

The Court finds that this Court has jurisdiction under Section 11-306 et. seq. of the District of Columbia Code (1951 Ed.); that the amount in controversy exceeds, exclusive of costs, the sum of $3,000.00; that Dorothy Smallwood Geare died a resident of the District of Columbia on December 28, 1954; that on February 2, 1954 Dorothy Smallwood Geare executed, acknowledged and delivered to Viola A. Hodson a deed to the following described real estate in the District of Columbia: Lot 83, in Square 2061, with improvements thereon known as 3047 Porter Street, N. W.; that Dorothy Smallwood Geare had sufficient mental

capacity to execute, acknowledge and deliver such deed; that the execution of the deed was not procured by any undue influence or fraud.

CONCLUSIONS OF LAW

1. The conveyance dated February 2, 1954, of premises 3047 Porter Street, Northwest, in the District of Columbia, from Dorothy Smallwood Geare, grantor, to Viola A. Hodson grantee, is valid, and no accounting is required by defendants to plaintiffs.

15 2. Defendants are entitled to judgment in their favor on the complaint filed herein with costs to be assessed against plaintiffs.

ALEXANDER HOLTZOFF
Alexander Holtzoff
Judge

December 9, 1955

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16 Filed Dec. 9, 1955

Judgment

Upon consideration of the Complaint to Set Aside Conveyance and to Require Reconveyance of Real Estate and for Accounting and Money Judgment, and the Answers of defendants filed herein, and after trial by the Court without a jury on the issues involved, and due consideration of evidence presented in open Court, ~~including three witnesses and seventeen exhibits for the plaintiffs and thirteen witnesses and six exhibits for the defendants,~~ the trial proceeding on the following days, October 26, 27, 28, and 31 and November 1 and 2, 1955, and the Court having ~~carefully reviewed and considered all of the foregoing and having~~ entered herein its findings of fact and conclusions of law ~~as to the lawful and proper determination of the issues~~ herein, it is by the Court this 9 day of December, 1955

ADJUDGED, ORDERED AND DECREED that the Deed dated February 2, 1954 conveying Lot 83 in Square 2061, known as 3047 Porter Street, N. W., Washington, D. C. from Dorothy Smallwood Geare, Grantor to Viola A. Hodson, Grantee, is valid and it is further

ORDERED that no accounting is required by defendants to plaintiffs, and it is further

17 ORDERED that the relief prayed for in said complaint is denied and judgment is hereby entered for the defendants with costs against the plaintiffs.

ALEXANDER HOLTZOFF
Alexander Holtzoff,
Judge

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18 Filed Dec. 28, 1955

Notice of Appeal

Notice is hereby given this 28th day of December, 1955, that the plaintiffs Grahame Thomas Smallwood, Jr., Elizabeth S. Wier and Eleanor B. Niebell, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 9th day of December, 1955 in favor of the defendant, Viola A. Hodson and the intervening defendant, Margaret Hynson Studt, against said plaintiffs, Grahame Thomas Smallwood, Jr., Elizabeth S. Wier and Eleanor B. Niebell.

ARTHUR J. HILLAND
Arthur J. Hilland

PAUL M. NIEBELL
Paul M. Niebell
Attorneys for Plaintiffs

21 Filed Jan. 4, 1956

Statement of Points on Which Plaintiffs Intend to Rely on Appeal

On the appeal in the above-entitled action, the plaintiffs intend to rely on the following points:

1. The Court erred in excluding from the evidence the affidavits of Neil P. Campbell, M. D., and Roger S. Cohen, M. D., filed in Mental Health No. 600-54 in this Court (Plaintiffs' Exhibit 1).

2. The Court erred in excluding from the evidence the records of Saint Elizabeths Hospital (Plaintiffs' Exhibit 14).

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491 Filed Jan. 18, 1955

Last Will and Testament of Dorothy Smallwood Geare

I, DOROTHY SMALLWOOD GEARE, of the City of Washington, District of Columbia, being of sound and disposing mind and memory, do hereby make, publish and declare the following as and for my Last Will and Testament, hereby revoking all former wills and testaments, and codicils thereto, at any time heretofore made by me.

ITEM I. I authorize and direct my executrix, hereinafter named, to pay out of my estate all of the expenses of my last illness, funeral and interment, including the cost of constructing, erecting and engraving a suitable headstone or monument over my grave, in such amounts as my said executrix in her sole discretion may deem to be proper, without regard to any limitation imposed by statute, law or rule of Court, as soon after my death as may be practicable. It is my further will and direction that my remains be cremated and my ashes interred beside those of my husband and son in the Smallwood lot of Glenwood Cemetery in the District of Columbia as designated on the books of said cemetery.

ITEM II. I give and bequeath unto The Masonic and Eastern Star Home of the District of Columbia, a body corporate, the sum of One Hundred Dollars ($100.00), cash.

ITEM III. I give and devise unto Viola A. Hodson all that parcel of unimproved land owned by me and located in the District of Columbia, known as Lot 2829 in Square 851, in fee-simple.

ITEM IV. All of my clothing and wearing apparel, jewelry and articles of personal use and adornment, books, pictures, bric-a-brac, silver, silverware, china, linens, photograph albums, scrap books and household furniture, furnishings and effects of every kind and description, as well as any other tangible personal property and effects, of which
492 I may die seized and possessed, I give and bequeath unto the said Viola A. Hodson, absolutely. It is my present intention to leave a written memorandum setting forth a suggested ultimate distribution of some or all of said tangible personal property and effects in this Item bequeathed, and it is my hope and desire that such ultimate disposition of the same so suggested by me will be carried out and made. I am cognizant of the fact that this expression of a desire on my part is not legally binding and does not qualify the absolute character of the bequest made by me in this Item.

ITEM V. All of the rest, residue and remainder of my property and estate, both real and personal, of whatever kind and wheresoever situate, of which I may die seized or possessed or to which I may in any manner be entitled at the time of my death, whether now owned or hereafter acquired by me, I give, devise and bequeath, absolutely and in fee-simple, unto Margaret Hynson Studt and Viola A. Hodson, share and share alike.

ITEM VI. I do hereby nominate, constitute and appoint Viola A. Hodson as executrix of this my last will and testament, to serve without bond or undertaking. For the pur-

pose of satisfying and discharging any debts, claims and taxes of my estate, I hereby expressly authorize and empower my said executrix to sell and dispose of my estate, both real and personal, or any part thereof, without the order of any Court, without the necessity of any determination of a deficiency of personalty, and without any obligation on the part of any purchaser or purchasers to see to the application of the purchase money.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my seal to this, my last will and testament, this 2nd day of February, 1954, at the City of Washington, D. C.

DOROTHY SMALLWOOD GEARE (SEAL)

Signed, sealed, published and declared by the above-named testatrix as and for her last will and testament
493 in the presence of us, who, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

ROBERT L. SMELTZER
1725 Ft. Hunt Rd.
Alexandria, Virginia

R. B. SMELTZER
1801 Quincy St., N.W.
Washington, D. C.

506 Filed May 20, 1955

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Probate Court

In Re Estate of
DOROTHY SMALLWOOD GEARE, *Deceased.*

Administration No. 87018

Order Framing Issues.

Upon consideration of the caveat of Grahame Thomas Smallwood, Jr., Elizabeth S. Wier and Eleanor S. Beasley, filed against a certain paper writing bearing date the 2nd day of February, 1954, filed herein, purporting to be the last will and testament of Dorothy Smallwood Geare, deceased, and of the answer of Viola A. Hodson, filed thereto, it is by the court this 20th day of May, 1955,

ORDERED, that the following issues be and they are hereby framed to be tried before a jury on the 6th day of June 1955:

One: Was the said paper writing dated the 2nd day of February, 1954, purporting to be the last will and testament of Dorothy Smallwood Geare, deceased, executed and attested in due form, as required by law?

Two: Was the said Dorothy Smallwood Geare at the time of the making and subscribing or of the acknowledging by her of the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

Three: Was the said paper writing dated the 2nd day of February, 1954, obtained, or the execution thereof procured from the said Dorothy Smallwood Geare, deceased, by fraud or deceit practiced upon the said Dorothy Smallwood Geare by Viola A. Hodson or any other person or persons?

507 Four: Was the said paper writing dated the 2nd day of February, 1954, obtained, or the execution thereof procured from the said Dorothy Smallwood Geare, deceased, by the undue influence or duress, or coercion of Viola A. Hodson or any other person or persons?

Five: Was the said paper writing dated the 2nd day of February, 1954, revoked by Dorothy Smallwood Geare, the deceased?

Six: Was the paper writing filed in this court and bearing date the 2nd day of February, 1954, the last will and testament of Dorothy Smallwood Geare, deceased?

EDWARD M. CURRAN
Judge

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509 Filed June 27, 1955

Order Granting Motion to Consolidate for Joint Trial With Civil Action No. 1098-55

This action came on to be heard upon the motion filed herein to consolidate the issues pending before the Court in the above-entitled case for a joint trial with the issues pending before the Court in Civil Action No. 1098-55, entitled Grahame Thomas Smallwood, Jr., et al, Plaintiffs, versus Viola A. Hodson, Defendant, and thereupon, upon consideration thereof, it is, by the Court, this 27th day of June, 1955, adjudged as follows:

That the said motion be, and the same hereby is, granted and that a joint trial of the issues in the above-entitled case with the issues in Civil Action No. 1098-55, entitled Grahame Thomas Smallwood, Jr., et al, Plaintiffs, versus Viola A. Hodson, Defendant, is hereby ordered

R. B. KEECH
Judge

513 Filed Oct. 26, 1955

Order Aligning Parties

This cause having come on to be heard upon the issues framed upon the caveat and the answer thereto, it is, by the court, this 26 day of October, 1955, ordered as follows:

That the caveators shall be designated as parties plaintiff and the caveatee as party defendant.

ALEXANDER HOLTZOFF
Judge

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516 Filed Oct. 28, 1955

Third Minute Entry

Friday, October 28, 1955
Civil Division No. Four
Judge Alexander Holtzoff, Presiding

Administration No. 87,018

In Re: Estate of
DOROTHY SMALLWOOD GEARE, *Deceased.*

(CAVEATORS) *Plaintiffs,*

vs.

(CAVEATEE) *Defendant.*

Now come here again the parties aforesaid in manner aforesaid, with the same jury and alternate jurors that was respited yesterday; whereupon the trial was resumed Issue No 6 struck by the Court, and after a further hearing of the evidence, is again respited until the meeting of the Court on Monday next.

518 Filed Nov. 1, 1955

Verdicts of the Jury

Tuesday, November 1, 1955
Civil Division No. Four
Judge Alexander Holtzoff, Presiding

Administration No. 87,018

In Re: Estate of
DOROTHY SMALLWOOD GEARE, Deceased.

(CAVEATORS) *Plaintiffs*,

vs.

(CAVEATEE) *Defendant*.

Now come here, again the parties aforesaid in manner aforesaid, with the same jury and alternate juror; whereupon the trial was resumed and the alternate juror was discharged; the jury begins deliberations, verdict of the jury as to the following issue, namely: "Was the said Dorothy Smallwood Geare at the time of the making or subscribing or of the acknowledging by her of the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?", is YES.; whereupon the jury is respited until the meeting of the Court tomorrow for further deliberation upon its verdict.

520 Filed Nov. 3, 1955

Thursday, November 3, 1955
Civil Division No. Four
Judge Alexander Holtzoff, Presiding

Administration No. 87,018

In Re: Estate of
DOROTHY SMALLWOOD GEARE, Deceased.

GRAHAME THOMAS SMALLWOOD, JR., ELIZABETH S. WIER, and ELEANOR BEASLEY NIEBELL, (CAVEATORS) *Plaintiffs*,

vs.

VIOLA A. HODSON, (CAVEATEE) *Defendant*.

Now come here again the parties aforesaid in manner aforesaid, with the same jury that was respited yesterday; whereupon the jury resumed its deliberation, verdict of the jury as to the following issues, namely: "Was the said paper writing dated the 2nd day of February, 1954, obtained, or the execution thereof procured from the said Dorothy Smallwood Geare, deceased, by the undue influence or duress, or coercion of Viola A. Hodson or any other person or persons?" is "NO"; "Was the said paper writing dated the 2nd day of February, 1954, revoked by Dorothy Smallwood Geare, the deceased?" is "NO"; "Was the said paper writing dated the 2nd day of February, 1954, purporting to be the last will and testament of Dorothy Smallwood Geare, deceased, executed and attested in due form, as required by law?" is "YES". By Direction of the Court; "Was the said paper writing dated the 2nd day of February, 1954, obtained, or the execution thereof procured from the said Dorothy Smallwood Geare, deceased, by fraud or deceit practiced upon the said Dorothy Smallwood Geare by Viola A. Hodson or any other person or persons?" is "NO". By Direction of the Court:

521 Filed Dec. 2, 1955

Decree Granting Probate Upon Verdict

The issues framed in this proceeding, upon the caveat and the answer thereto, having been tried in open court, and the jury having found upon their answers to the issues submitted that the paper-writing bearing date the 2nd day of February, 1954, and the duplicate original thereof bearing the same date, constitute the last will and testament of Dorothy Smallwood Geare, deceased, and upon consideration of the petition previously filed for probate and letters testamentary, it is by the Court this 2d day of December, 1955,

ADJUDGED, ORDERED and DECREED, That the said will of Dorothy Smallwood Geare, deceased, dated February 2, 1954, be and the same hereby is admitted to probate and record as a will of both real and personal property, and that letters testamentary thereunder be and they are hereby granted and shall issue to Viola A. Hodson, the executrix named in said will, provided she first files her undertaking in the penal sum of one thousand dollars ($1,000.00) with surety approved by the Court, conditioned for the faithful performance of her trust.

LUTHER W. YOUNGDAHL,
Judge

522 Filed Dec. 28, 1955

Notice of Appeal

Notice is hereby given this 28th day of December, 1955, that the caveators-plaintiffs, Grahame Thomas Smallwood, Jr., Elizabeth S. Wier and Eleanor B. Niebell, hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 2nd day of December, 1955, the judgment being designated "Decree Granting Probate Upon Verdict" in favor of the caveatee-defendant, Viola A. Hodson, against said caveators-plaintiffs, Grahame Thomas Smallwood, Jr., Elizabeth S. Wier and Eleanor B. Niebell.

ARTHUR J. HILLAND
Arthur J. Hilland

PAUL M. NIEBELL
Paul M. Niebell
Attorneys for Caveators-Plaintiffs

527 Filed Jan. 4, 1956

Statement of Points on Which Plaintiffs Intend to Rely on Appeal

On the appeal in the above entitled action, the caveators-plaintiffs intend to rely on the following points:

1. The Court erred in excluding from the evidence the affidavits of Neil P. Campbell, M. D. and Roger S. Cohen, M. D., filed in Mental Health No. 600-54 in this Court (Plaintiffs' Exhibit D).

2. The Court erred in excluding from the evidence the records of Saint Elizabeths Hospital (Plaintiffs' Exhibit 14).

3. The Court erred in its instructions to the jury when the jury returned to open court after the case had been submitted to them and during their deliberations.

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2 EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Mr. Hilland: If Your Honor please, I will call the defendant, Mrs. Hodson, as an adverse witness.

The Court: Very well.

Thereupon

Viola A. Hodson

one of the defendants, called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilland:

Q. Will you please state your full name. A. Viola A. Hodson.

The Court: Would you mind speaking loud so we can all hear you.

The Witness: Viola A. Hodson—H-o-d-s-o-n.

By Mr. Hilland:

Q. And what is your address? A. 1805 Quincy Street, Northwest.

Q. You are the defendant or caveatee in this case? A. I am.

Q. I hand you what is plaintiffs' Exhibit No. 1 for identification, and call your attention to a paper marked "Filed April 30, 1954," and to the second page, and ask you whether or not that is your signature. A. It is.

Q. And then I call your attention to the third page and ask you whether or not that is your signature. A. Yes, it is.

Q. And did you make oath to that on April 29, 1954, before Marguerite G. Wimmer, a notary public? A. I did.

Mr. Hilland: I offer that in evidence, Your Honor.

Mr. Raysor: What is it you are offering into evidence, Mr. Hilland?

Mr. Hilland: That petition, the whole petition (handing the petition to counsel).

The Court: I think you can identify the document you are offering into evidence.

Mr. Hilland: Yes. I am offering the petition which is marked "Filed April 30, 1954, Harry M. Hull, Clerk."

Mr. Raysor: I have no objection.

The Court: It may be received.

(The petition heretofore marked for identification as Plaintiffs' Exhibit No. 1 was received in evidence.)

Mr. Hilland: May I read it to the jury?

The Court: Yes.

Mr. Raysor: Does that mean the petition, or the affidavit?

The Court: Only the petition signed by the witness.

Mr. Raysor: I have no objection.

4 (Counsel for plaintiffs having read to the jury, the first part of the petition, Plaintiffs' Exhibit No. 1:)

The Court: Why don't your read just the pertinent portions of that long document?

Mr. Hilland: All right. I will read paragraph 5, then, at Your Honor's suggestion.

"Petitioner states that the mental condition of respondent has progressively worsened"

The Court: Who is the respondent? I think we should identify that.

Mr. Hilland: Dorothy Smallwood Geare.

The Court: That will be stipulated?

Mr. Raysor: Yes, Your Honor.

Mr. Hilland: And the petitioner is Mrs. Hodson.

The Court: Yes.

(Counsel for plaintiffs read to the jury paragraph 5 of the petition, Plaintiffs' Exhibit No. 1.)

Mr. Hilland: That is all Your Honor suggests that I read.

By Mr. Hilland:

Q. Mrs. Hodson, at the time you swore to that petition, on April 29, 1954, were the allegations of paragraph 5, which I have just read, true?

The Court: We are going to assume that she considered them true, because they were sworn to. You don't have to cross-examine her. Any cross examination will be for the other side.

By Mr. Hilland:

Q. Mrs. Hodson, referring to the same exhibit, that is, plaintiffs' Exhibit No. 1 for identification, I show you two other papers marked "Filed April 30, 1954," that is, this one and this one, and ask you whether or not you filed those two papers on that date, through your lawyers, in support of the petition which has just been received in evidence.

Mr. Raysor: I object, Your Honor.

The Court: This is preliminary. Please don't object unnecessarily.

The Witness: I suppose they were. They were turned over to my attorney, and that was the procedure.

By Mr. Hilland:

Q. Are you familiar with this signature on the first paper? A. Yes, I am.

Q. And whose signature is that on the first paper? A. Dr. Neil P. Campbell.

Q. And are you familiar with the signature on the second paper? A. No; I never saw it.

Q. You never saw that? A. No.

6 Q. You are not familiar with that signature? A. I never saw the man and I never saw the—

Mr. Hilland: Then, if Your Honor please, I offer this paper bearing the signature of Neil P. Campbell in evidence, as an admission against interest.

Mr. Raysor: I object to it.

The Court: Objection sustained. It is not an admission of this witness.

Mr. Hilland: May I ask her another question, Your Honor?

The Court: Yes.

By Mr. Hilland:

Q. Mrs. Hodson, you filed this paper signed by Neil P. Campbell, in support of your petition which is in evidence, did you not? A. I turned that over to my attorney. I don't know what was filed other than my own affidavit.

Q. But you obtained that paper from Dr. Campbell, did you not? A. I did not.

Q. Who obtained it? A. I think Mr. Cromelin's office did.

The Court: I am not going to admit an affidavit attached to a petition, executed by a third party, as an admission against interest by the petitioner.

7 Mr. Hilland: Yes. Well, I have made a proffer of it, Your Honor.

. . . . . .

Plaintiffs' Exhibit No. 1

Filed April 30, 1954

Petition for Writ De Lunatico Inquirendo and for Attachment

The petition of Viola A. Hodson respectfully shows to the Court as follows:

1. Your petitioner is an adult citizen of the United States and a resident of the District of Columbia, and brings this petition as provided by Sections 21-310 and 21-311 of the District of Columbia Code (1951).

2. Dorothy Smallwood Geare is a citizen of the United States and has been a resident of the District of Columbia since her birth, approximately 65 years. Her present address is 1805 Quincy Street, Northwest, Washington, D.C. At present she is a patient in Emergency Hospital, Washington, D.C., which she entered April 18, 1954, for treatment.

3. The only relatives of respondent known to your petitioner are: Grahame T. Smallwood, nephew, whose address is 3200 Sixteenth Street, Northwest, Washington, D.C.; Mrs. Elizabeth A. Weir, niece, whose address is 1900 "F" Street, Northwest, Washington, D.C.; and Mrs. Eleanor S. Beasley, niece, whose address is 3200 Sixteenth Street, Northwest, Washington, D.C.

4. Respondent does not have any property, real or personal, other than her immediate personal effects and clothing. Her only income is the sum of $57.00 monthly from the Civil Service Retirement Fund.

5. Petitioner states that the mental condition of respondent has progressively worsened since her retirement from United States Government Service in July, 1953. She is unable to care for her person. She is confused and imagines that she is in San Francisco. Petitioner believes that respondent is incapable of managing her own affairs and is not fit to be at large or to go unrestrained and, if permitted to remain at large, the rights of persons and property will be jeopardized and, further, that respondent is a fit subject for treatment because of her mental condition.

WHEREFORE, the premises considered, your petitioner respectfully prays:

1. That a Writ De Lunatico Inquirendo issue to the respondent requiring her to show cause why she should not be adjudged to be a person of unsound mind.

2. That respondent be apprehended and detained for preliminary examination in St. Elizabeths Hospital.

3. That this petition be referred to the Commission on Mental Health of the District of Columbia for report and recommendation.

4. And for such other and further relief as to the Court may seem just and proper.

VIOLA A. HODSON
Viola A. Hodson

PAUL B. CROMELIN
Paul B. Cromelin

Richard L. Walsh
RICHARD L. WALSH
Attorneys for Petitioner

District of Columbia, ss:

Viola A. Hodson, being first duly sworn, on oath deposes and says that she has read the foregoing petition by her subscribed and that the averments therein contained are true to the best of her knowledge, information and belief.

VIOLA A. HODSON
Viola A. Hodson

Subscribed and sworn to before me this 29th day of April, 1954.

MARGUERITE G. WIMMER
Notary Public, D.C.

Filed April 30, 1954

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mental Health No. 600-54

In the Matter of

DOROTHY SMALLWOOD GEARE, *Patient*

AFFIDAVIT

District of Columbia, ss:

Neil P. Campbell, being first duly sworn, on oath deposes and says that he is a citizen of the United States and a resident of the District of Columbia, residing at 1409 Newton Avenue, N.W.; that he is a physician and has Dorothy Smallwood Geare under his care and treatment at the present time; that he has observed Mrs. Geare for some months and found that her mental condition has progressively worsened; that her mental condition has deteriorated markedly since her retirement from Government employment last year; that she is disorientated and confused; that she is incontinent and has elevation of blood pressure; that she suffers from Cerebral Arteriosclerosis. It is my opinion that Dorothy Smallwood Geare is of unsound mind, incapable of managing her own affairs and not fit to be at large or to go unrestrained and, if permitted to remain at liberty, the rights of persons and property will be jeopardized; it is my opinion that Mrs. Geare is a fit subject for treatment because of her mental condition.

NEIL P. CAMPBELL
Neil P. Campbell, M. D.

Subscribed and sworn to before me this 30th day of April, 1954.

VIOLET B. BLEWETT
Notary Public, D.C.

Filed April 30, 1954

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mental Health No. 600-54

In Re: DOROTHY GEARE, *Patient*

AFFIDAVIT

I, Roger S. Cohen, M. D., being duly sworn, hereby certify that I am a citizen of The United States and that I reside at 3767 Oliver Street, N. W., Washington, D. C.; that I have practiced medicine in The District of Columbia for 30 years, that I have specialized in nervous and mental disorders and that I examined Mrs. Dorothy Geare at Emergency Hospital, Washington, D. C. on April 28, 1954 and found that she is suffering from a Psychosis with Cerebral Arteriosclerosis manifested by periods of extreme mental confusion, disorientation for time and place, marked defects of memory, especially for recent events, inappropriate laughter, difficulty in using the correct word, incontinence of urine and marked elevation of blood pressure. It is my opinion that Mrs. Dorothy Geare is of unsound mind, and it not a fit person to be at large or to go unrestrained, and if permitted to remain at liberty in The District of Columbia, the rights of persons and property will be jeopardized or the preservation of public peace imperiled and the commission of crime rendered probable and that she is a fit subject for treatment in a hospital by reason of her mental condition.

ROGER S. COHEN, M. D.
Roger S. Cohen, M. D.

Subscribed and sworn to before me, this 29th day of April, 1954.

WILLIAM S. JONES
Notary Public,
Washington, D. C.

23 By Mr. Hilland:

Q. There was no expense connected with her admission to St. Elizabeths Hospital, was there? A. Nothing but the ambulance. I have never received a bill from them.

Q. She was transferred to St. Elizabeths Hospital because of psychosis, was she not? A. I couldn't tell you. I don't know what the records say.

Q. After she was transferred to St. Elizabeths Hospital, the officials at St. Elizabeths Hospital asked you to inform them of the history in her case, did they not? A. I spoke to one person at St. Elizabeths, on the Tuesday that I went down there.

Q. And didn't that person take a long statement of information from you at that time? A. I don't think it was so long. I wasn't in his office ten minutes.

Q. But he did ask you questions? A. He did.

Q. And you answered them? A. I answered them to the best of my ability.

Mr. Hilland. I offer in evidence, Your Honor, Plaintiffs' Exhibit No. 14. You may want to see it. It is the hospital records.

24 The Court. Yes.

Have you seen it?

Mr. Hilland. Yes, he has seen it.

Mr. Raysor. Yes; I looked it over last evening.

The Court. Just hand it to the Clerk.

Mr. Hilland. What I want to ask the witness about is right there, Your Honor (indicating).

The Court. Is this in evidence?

Mr. Hilland. I am offering it now, Your Honor.

The Court. Oh, you are offering it.

Mr. Raysor. I object to it, Your Honor. He hasn't laid the proper foundation for it as yet.

The Court. I think this is an important matter. I am going to ask you gentlemen to come to the bench.

(At the bench:)

Mr. Hilland. According to the record, this is information this witness gave the hospital official.

The Court. But you are offering it in evidence.

Mr. Hilland. Yes.

The Court. Of course, there would be no question that you would have a right to cross-examine her concerning her own statements. You would have a right to ask her "Did you say so and so to the hospital officials?"

Mr. Hilland. That is what I would ask.

The Court. But you are offering the document in
25 evidence, which would permit you to read the whole document to the jury. That presents a different question.

Mr. Hilland. Yes.

The Court. What is your objection?

Mr. Raysor. I agree with Your Honor, that if he wants to interrogate her if she said so and so, and if he disagrees—

The Court. Tell me what your objection is.

Mr. Raysor. My objection is, this is offering the document itself.

The Court. Yes, I know; but what is the basis of your objection?

Mr. Raysor. It is hearsay. It isn't sworn. There are no witnesses available. It is not the best evidence.

The Court. Oh no; that is not a good ground. I presume Mr. Hilland is offering it on the basis that it is a record kept in due course of business, under the Federal Shopbook Rules.

Mr. Raysor. Yes. I have examined those authorities at length and, as I understand the rule, it is that matters of opinion, merely routine statements and dates, and things of that sort, are admissible.

Mr. Hilland. That is all I am offering.

The Court. I am going to sustain the objection.
26 You know, there are divergent rulings in different

circuits on the Federal Shopbook Rule. The Second Circuit has a much more liberal interpretation of the Federal Shopbook Rule than this circuit has. I think in the Second Circuit this would be admissible. But in the New York Life Insurance Company versus Taylor, and in a subsequent case of United States against Clainos, our Court of Appeals has limited the Federal Shopbook Rule to routine clerical entries. A statement of what somebody tells the person who keeps the record, except for purely routine facts, is not, in my judgment, within the Court of Appeals opinions.

Mr. Hilland. I thought, Your Honor, it was within the New York Life Insurance Company case.

The Court. I don't think it is now. For instance, what is within the New York Life Insurance Company versus Taylor case would be entries showing date of admission, temperature, pulse, blood pressure, or symptoms like the patient seemed dazed or incoherent; but anything beyond that would not be a routine clerical entry. If somebody accompanying the patient said the patient had been ill for so many days, I wouldn't think that would be routine.

Mr. Hilland. Isn't this admissible as an admission against interest by this witness? What I am offering here is what she told.

The Court. That is why I say you have a right to
27 ask her "Did you say so and so?" "Did you say so and so?" And if she denies she did, you have a right to show it to her and ask her if this doesn't refresh her recollection. If she say no, you have a right to subpoena the person who made this record and ask that person whether she made these statements.

But this is not a document that proves itself as a document made in due course of business, because of the Clainos interpretation of the Federal Shopbook Rule by our Court of Appeals. And you know the Supreme Court of the United States, in Palmer versus Hoffman, put a rather narrow interpretation on the Federal Shopbook Rule. That

case involved a railroad accident and the plaintiff sought to place in evidence reports of the employees of the railroad company, from the company's files. Justice Douglas, I think it was, said those were not records kept in the due course of business, because the business of the company is to run a railroad, he said, and not to litigate.

I am going to sustain the objection. But you are free to proceed along the line I have indicated.

Mr. Hilland. Yes, sir.

(Counsel having returned to trial tables:)

By Mr. Hilland:

Q. Mrs. Hodson, when you were interviewed by an official of St. Elizabeth's Hospital, after Mrs. Geare was
28 placed there on April 30, 1954, did you inform that offici that during the early months of 1954 the patient, meaning Mrs. Geare, seemed to be going more and more into a stupor? A. Not to my knowledge.

Q. Did you inform that official that during March she did not recognize her old home that she had lived in for quite a while? A. I don't remember.

Q. Do you deny that you so informed the official? A. I don't remember informing him. Most of the things he asked me, he made just check marks. He made no notation excepting on amount, I believe, as I remember.

Q. Do you deny that you told him that during the early months of 1954 Mrs. Geare seemed to be going more and more into a stupor? A. I told you I don't remember.

Q. Well, I am asking you, do you deny that you made such a statement? A. I do not remember making such statement.

Mr. Hilland. May I have an answer to the question?

The Court. If she says she does not remember, then she can neither affirm nor deny.

The Witness. He may have asked me that question.

The Court. You have answered the question. Wait until another question is asked.

By Mr. Hilland:

29 Q. Did you inform that official that during the past six weeks, March and April, that Mrs. Geare had stopped reading? A. I don't remember any of those questions ever being propounded to me.

Q. Did you inform the official that there is a possibility that she had visual hallucinations? A. No. I never even have heard the phrase.

Q. Did you tell the official that Mrs. Geare would greet people who were not there? A. No, sir.

. . . . . .

Plaintiffs' Exhibit No. 14

Standard Form 07
Promulgated August 1948
By Bureau of the Budget
Circular A-32

70,275

CLINICAL RECORD

Report on INFORMATION
or
Continuation of S. F. .....
(*Strike out one line*) (*Specify type of examination or data*)
(*Sign and date*) Dr. Steinkirchner—JMW
May 6, 1954.

Informant: Mrs. Viola D. Hodson (Friend),
1805 Quincy St., N. W.,
Washington, D. C.
TAylor 9-1805.

Note: The information appears to be valid. The informant is a well-dressed, cultural, gentle woman, who makes a real effort to impress the examiner with her contacts in the Washington social scene. The patient has been living with the informant for the last 13 years.

. . . . . .

Present Illness:

Beginning about January of 1953, the patient began to lose weight. She went from 138 lbs. in January 1953 to 96 lbs. in December of 1953. Beginning in the winter of 1953, she was very fatigued. She would spend the whole weekend in bed. In the summer of 1953 she became too exhausted to go to work. Her appetite had been poor all of 1953. She needed more sleep than usual, although during the winter of 1953 she would get up sometimes at night, being unable to sleep. In September of 1953, the patient had an episode that was possibly a nonparalytic cerebrovascular accident in which her hands suddenly went cold and limp. During the early months of 1954, the patient seemed to be going more and more into a stupor. She had several heart attacks during March and April after the stuporous condition had begun. During March she did not recognize her old home that she lived in for quite awhile. During the past six weeks (March and April), the patient had stopped reading. There is a possibility that she had visual hallucinations. She would greet people who were not there. It is also possible that when she went to Emergency Hospital on February 18, she may have had auditory hallucinations, for then the informant heard the patient say, "My stomach says, 'What do you know about that?' ". Also, the patient apparently had delusions of location, thinking that she was in San Francisco. Apparently, she went to Emergency Hospital because of a severe heart attack on April 17, going to Emergency Hospital on the 18th. At that hospital she got out of bed and began to pull the clothes of other patients. It was then that they asked that she be removed from the hospital. Hence, on the 30th, she was brought to Saint Elizabeths Hospital.

(*Continue on reverse side*)

Patient's Last Name—First Name—Middle Name
Geare Dorothy S.

Saint Elizabeths Hospital
(Name of Hospital or Other Medical Facility)

Register No. 70,275 Ward No. WR

Report On .....
or
Continuation of 507 Information -3-

19 Mr. Hilland. Miss Wolfowitz, from St. Elizabeths Hospital.

Thereupon

Ruth Wolfowitz.

called as a witness by counsel for plaintiffs and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hilland:

Q. Will you please state your full name? A. Ruth Wolfowitz—W-o-l-f-o-w-i-t-z.

Q. What is your address? A. 460 Newcomb Street, Southeast.

Q. Miss Wolfowitz, where are you employed? A. At St. Elizabeths Hospital.

Q. Have you responded to a subpoena to produce records of St. Elizabeths Hospital?

The Court. Just a moment. Is this for the introduction of records?

Mr. Hilland. That is all.

The Court. I don't think we ought to waste time on formal proof.

Mr. Hilland. All I am offering, if Your Honor please, are the factual matters—

Mr. Raysor. May this be out of the presence of the jury, Your Honor?

20 Mr. Hilland. Oh, I am not saying anything about the records. All I want to offer from those records are the factual matters which would be admissible under the decision in Taylor versus New York Life Insurance.

The Court. I suggest that the witness deliver the records to the Clerk, and she may be released, if she wishes; and at the proper time you may offer such portions in evidence as you desire. If there is any objection to any of them, I shall pass upon that at that time.

Mr. Raysor. We have no desire to keep Miss Wolfowitz.

Mr. Hilland. That will be fine. Thank you.

The Court. You may deliver the records to the Clerk.

The Witness. I have been instructed by the hospital to remain with the records, if I may.

The Court. Of course, when they are offered in evidence, they will be taken away from you. However, you may remain in the courtroom as long as you want to. The Court thought it would make it easier for you.

You may produce the records.

Mr. Hilland. I offer them in evidence, Your Honor, in accordance with our understanding, and I will take them up later.

Mr. Raysor. I object to their admission.

21 The Court. I am not going to take a blanket offer like that, if there is an objection. You will have to indicate the parts that you want to read into the record, and then Mr. Raysor will have to indicate to which of those parts he objects. Then I will have to pass upon the objection.

Mr. Hilland. Yes; that is what I have in mind, Your Honor.

. . . . . .

30 The Court (continuing). Ladies and gentlemen of the jury, the 12 regular jurors may now retire. Upon reaching the jury room you will select a foreman from amongst yourselves who will preside over your deliberations and speak for you in returning your verdict, and then proceed to reach a verdict on each of these three questions.

The 12 regular jurors will follow the Marshal. The alternate juror will please remain a moment.

(Accordingly at 2:45 p.m. the jury retired to consider of its verdict.)

The Court. At this time the Court wishes to thank the alternate juror for his participation in this trial. . . .

(At 5:30 p.m., November 1, 1955:)

The Court. Ladies and gentlemen of the jury, the hour is becoming late and some of you may be getting hungry and will be ready pretty soon for dinner. So I brought you here to make an inquiry. Who is the Foreman of the jury?

The Foreman. I am sir.

The Court. Without disclosing or indicating how the jury stands, can you state as to whether you are likely to reach a verdict very shortly, or not?

The Foreman. At the present time, Your Honor, it looks like we will not reach a verdict very shortly.

The Court. Have you reached a verdict as to any

31 one of the three questions?

The Foreman. Yes, Your Honor. We have reached a verdict on the first issue.

The Court. On the first issue?

The Foreman. Yes, sir.

The Court. But not on the other two?

The Foreman. But not on the other two.

The Court. I think, then, I will take the verdict on the first issue at this time.

The Deputy Clerk. Mr. Foreman, was the said Dorothy Smallwood Geare at the time of the making, subscribing

or of the acknowledging by her of the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

The Foreman. Yes.

The Deputy Clerk. Members of the jury, your Foreman says that your answer to Issue No. 1 is yes; and so say you each and all. (Jurors responded affirmatively.)

. . . . . .

38 (At 12:10 p.m., November 2, 1955, the jury being in the box:)

The Court. Ladies and gentlemen of the jury, the Court has received a note from your Foreman reading as follows:

"The jury has not reached agreement on Issues No. 2 and No. 3. It is requested that the Court reinstruct the jury on Issues 2 and 3."

Mr. Foreman, does the Court correctly understand that you want substantially the entire instruction on those two issues repeated?

The Foreman. Your Honor, that is correct. We feel that might clear it up.

The Court. The Court will be very glad to do that.

. . . . . .

43 Mr. Foreman, have I fully answered your questions? If you or any other member of the jury has any questions to ask, I shall be glad to endeavor to answer them.

The Foreman. You have answered the question for me, Your Honor. I couldn't speak for the rest of the members of the jury.

The Court. Does any member of the jury desire to ask anything further?

Juror No. 8. Your Honor, there is just one thing I have considered. Mrs. Hodson swore under oath, signed a paper stating that Mrs. Geare had no money to pay for hospital care. And, as I understand it, that wasn't right.

The Court. Well, no, I do not want to know what is going on in your mind, or what was discussed in the jury room.

Juror No. 8. No.

The Court. If you have any question to ask the
44 Court as to which the Court can help you, the Court will be very glad to have you ask the question. But please do not reveal the operations of your own mind in this connection.

Juror No. 8. Well, this is one thing that I don't know about. If it was proven in the evidence that she did not tell the truth in one place, do we have to consider she tells the truth in another?

The Court. That is for you to decide.

Juror No. 8. That is what I want to know.

The Court. In other words, you have a right to say "Well, she didn't tell the truth on this point, but she did tell the truth on that." Or you have a right to say "Well, she didn't tell the truth on this point, and we don't want to believe her on anything."

Some people tell the truth at all times. Some people might tell a lie on one point and tell the truth on something else. And others might tell so many lies that they are not to be believed generally. All that is for you to decide. You are to weigh the evidence and decide what evidence to believe.

I do want to say this to you: Confine your thinking and your consideration to the two questions that you have to decide, and don't go off on tangents on other matters. Just confine yourself to these questions. And in order to concentrate your mind on them, I am going to read
45 them again. Issue No. 2:

Was the paper writing—that is, the will—dated the second day of February, 1954, obtained or was the execution thereof procured, from the said Dorothy Smallwood Geare, deceased, by the undue influence or duress or coercion of Viola Hodson or any other person or persons?

You have to answer that "Yes" or "No." And concentrate on that and don't give any thought to any extraneous matters.

And then when you come to Issue No. 3, the question is:

Was the said paper writing—that is, the will—dated the second day of February, 1954, revoked by Dorothy Smallwood Geare, the deceased?

Answer that "Yes" or "No." And again concentrate on that specific question and do not consider any extraneous matters.

Have I answered your question?

Juror No. 8. I think so.

The Court: Is there any other juror that has any question? (No response.)

You may return to the jury room for further deliberation.

Mr. Niebell. Your Honor, may I make a suggestion?

The Court. No, you may not. You may come to
46 the bench if you wish to say anything. You may not say anything in open court.

(At the bench:)

Mr. Niebell. Your Honor, I was just wondering whether it would be helpful to the jury to define the term "confidential relationship."

The Court. No. There was no request for any such instruction and it is too late to submit any additional requests. I think I have told the jury enough.

(Counsel having returned to trial tables:)

The Court. You may retire and resume your deliberations.

(Accordingly at 12:25 p.m. the jury retired further to consider of its verdict.)

(At 2:55 p.m., November 2, 1955:)

The Court. Ladies and gentlemen of the jury, the Court has received a note from your Foreman reading as follows:

"We the jury have not reached an agreement on Issues No. 2 and 3. We do not appear to be close to reaching an agreement. This appears to be a hung jury. All members affirm their decisions."

Well, I am quite sure this is not a hung jury. I am not going to accept this statement, ladies and gentlemen
47 of the jury. This trial took about three or four days. It cost the taxpayers a considerable amount of money. In fact, it has taken parts of five days, and the case should be decided.

You must endeavor to reach an agreement, if at all possible. Some jury some time will have to decide this case, and you should be that jury. No jury will know any more about this case than you do. You have before you all the evidence that is available and admissible under the rules of law, and no jury will have any more than you. If I may say so, you are fully as capable and intelligent as any other jury. So you ought to make every possible effort to arrive at a verdict and to reach a conclusion on these two issues.

I am going to make certain suggestions to you which I think may be of help to you, and if you follow those suggestions I am sure you can reach a verdict in a very short time. It is of course true that the verdict of the jury should represent the opinion of each individual juror. But it by no means follows that opinions may not be changed or should not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by discussion and comparison of views and arguments among the jurors themselves.

No juror should go to the jury room with a blind determination that the verdict should represent his or her
48 opinion of the case at that moment, or that he or she should close his or her eyes and ears to the arguments of other jurors who are equally honest and equally intelligent.

Each juror should listen with deference to the arguments of the other jurors, and each juror should distrust his or her own judgment if he or she finds that a large majority of the jury takes a different view of the case than he or she takes. In that event the juror who is in a small minority or minority should search his mind very carefully and restudy the case with deference to the views of the majority of the jurors.

Of course the final verdict must be the verdict of each individual juror and not mere acquiescence in the conclusion of your fellow jurors. Nevertheless I instruct you that it is your duty to examine the issues with an open mind and with candor and with proper regard and deference to the opinions of each other. It is your duty to decide the case if you conscientiously can do so. You should listen to each other's argument with a disposition to be convinced.

If much the larger number favor one side or the other, a dissenting or minority juror should consider whether, in the light of the opinions that are expressed by the majority, he or she is not in error and should not change his views.

I want you to go back to the jury room, continue
49 your deliberations and discuss the case, among yourselves, in the light of these additional instructions that I have given you, and in a friendly spirit; and I see no reason why you should not promptly reach a verdict.

You may return to the jury room.

(Accordingly at 3:00 p.m. the jury again retired to consider further of its verdict.)

(At 3:45 p.m., November 2, 1955:)

The Court. Mr. Foreman, without disclosing how the jury stands, will you please inform the Court what progress you are making towards arriving at a verdict. Are you likely to have a verdict very shortly?

The Foreman. It doesn't appear, Your Honor, that we will have a verdict very shortly. We are still discussing it and arguing it and trying to reach a verdict.

The Court: I beg pardon?

The Foreman. We are still arguing it and discussing it and trying to reach a verdict; but we are not unanimously agreed.

The Court. Have you agreed on either of the two questions remaining?

The Foreman. No, sir; not on issues 2 and 3.

The Court. Of course, you have been locked up in the jury room since ten o'clock this morning, and I am wondering whether it would not be better to let you go for the day so that you can get out and get some fresh air and get the cobwebs out of your minds, so to speak, and come back tomorrow and resume your deliberations, or whether you would rather continue them further this afternoon. Will those of you who would rather be released at this time and come back tomorrow morning raise your hands. (Most of the jurors so responded.)

And how many would rather continue this afternoon? (Two of the jurors so responded.)

There are only two who would rather continue this afternoon. I think I ought to be guided by the comfort and desires of the majority. I think, too, that perhaps it might be conducive to reaching a verdict if you are given a chance to get away from each other after having been together since ten o'clock. Perhaps the tempers of some of you might be frayed. I hope not. But it is a nervous strain. So I am going to release you now, to come back tomorrow morning to the jury room at ten o'clock and to continue your deliberations.

I want you all, each one of you, to bear in mind the suggestions that I made to you at three o'clock, when you were back here, namely, that we have spent five days trying this case. That is an expense to the taxpayers. You should reach a decision. Some jury will have to de-

cide this case and you should be that jury, because
51 no other jury will know any more about the case than you do. And I want to repeat, again, that if a large majority is one way or the other—and I don't care which way—then the minority should be humble enough to ask themselves whether they ought not reconsider their views.

The purpose of the jury system is for the jurors to confer with each other, and not for each one to cast his own individual vote and adhere to it throughout. Of course the final judgment must be the judgment of each individual juror; but in arriving at that judgment each juror should carefully consider the views of the other jurors, with respect and patience and deference. And particularly if a large majority is one way or the other, the dissenting or the minority jurors ought to ask themselves whether they should not review again the arguments of the majority and possibly adhere to their views.

I am not asking you to give up your convictions; but I am suggesting that each one of you owes it to the other jurors to give careful weight to their views in deciding what your own vote should be, especially if a large majority is one way or the other. Of course, I do not know whether that is the case or not.

And the minute you leave the jury box, do not discuss this case until you have come back to the jury room at ten o'clock tomorrow morning. You will be excused at
52 this time. Please be back in the jury room at ten o'clock tomorrow morning.

(Accordingly at 3:50 p.m. the jury was excused, to return and resume their deliberations at 10 o'clock tomorrow morning, Thursday, November 3, 1955.)

Thursday, November 3, 1955

Before Judge ALEXANDER HOLTZOFF and a jury, the jury having been excused at 3:50 p.m. yesterday to return and resume its deliberations at 10 a.m. today.

54 (The jury returned to the Court Room at 2:45 p.m., after which the following occurred in open court:)

The Court: Ladies and gentlemen of the jury, the Court has received the following note from your foreman:

"We, the jurors, request that we be reinstructed regarding our responsibilities to get together on a unanimous verdict."

Your responsibility is this, and I am going to repeat briefly the remarks that I made about twenty-four hours ago.

The object of the jury system is to secure unanimity by comparison of views in the jury room and by discussions among the jurors themselves.

In other words, each juror should listen with deference to the arguments of the other jurors.

And each juror should have a distrust of his own judgment if he or she should find that a large majority of the jury takes a different view.

In other words, no juror should go to the jury room and stay there in the jury room with a blind determination that the verdict should represent his or her opinion on the case at that particular moment.

No juror should close his or her eyes and ears to the arguments of other jurors who are equally honest and equally intelligent.

55 Of course, the verdict finally must be the verdict of each individual juror, and not a mere acquiescence in the conclusions of the other jurors, but each juror should examine the subject with an open mind and with

candor and with proper deference to the opinions of each other juror.

It is your duty to decide the case if you can conscientiously do so.

You should listen to each other's argument with a disposition to be convinced. If the majority of the jurors favor one side or another, a minority or dissenting juror should consider whether in the light of the opinions that are expressed by the other jurors in the jury room, he or she may be in error.

And now, these issues are not difficult. They are simple. They have been tried out very ably by both sides.

All available evidence that is admissible under the rules of law have been brought before you. And a decision has to be reached by a jury, and you are that jury.

No other jury will know anything more about the case than you do, and you ought to make every effort, and you have a responsibility to endeavor to arrive at a unanimous verdict and reach a conclusion.

Now, I want you to go back to the jury room, and make an effort—a real effort—to arrive at a unanimous verdict, and again I repeat, that each juror should not as-
56 sume that his views are the only right views. You must listen and consider with deference the views of the other jurors, especially if there is a large majority preponderating one way or the other, and in that event the minority or the dissenting jurors should have some distrust of their own judgment, and re-examine the issues with a deference to the opinions of the other jurors.

Now, is there anything else that any member of the jury would like to ask the court?

The Foreman: Your Honor—

The Court: Mr. Foreman?

The Foreman: I don't have a question of my own, but I think one member of our panel would like to ask a question.

(One of the lady jurors indicated that she did not wish to ask a question.)

The Foreman: I am sorry, sir. I was mistaken.

The Court: I hope you will reach a verdict. This case took about five days to try. You have all the evidence. You have been out for a long time. I think you ought to reach a verdict promptly. I hope you will do so.

(At the bench:)

Mr. Hilland: Your Honor, yesterday when you gave them the same charge, you told them that they did not have to give up their own convictions. I don't believe I heard you say that today.

57 The Court: I am not going to say it. I did say that the verdict of the jury—the final verdict—must represent the verdict of each individual juror.

Mr. Hilland: Should they be told that they didn't have to give up their own convictions for—

The Court: I did not tell them that yesterday.

Mr. Hilland: I am quite sure that I heard your Honor say that.

The Court: I do not use those words. I am not going to tell them that.

Mr. Hilland: May the record show that I requested the court to tell them that no individual juror need give up their own convictions?

The Court: I deny the request.

Mr. Hilland: I am wondering about leaving them out for long. You know it is actually two days as of now since they were let out, or they took the case. It does seem to me, I don't know how they stand. I have no idea.

The Court: I have known of jurors staying out a week or more.

Mr. Hilland: I have never—

The Court: That does not often happen in civil cases. I remember a case in the southern district of California a couple of years ago where the jury was out eight or ten

days. I do not say that I am going to keep them that long.
I think they will get a verdict very promptly. I
58 do not know which way they are heading, but I
have a feeling that there must be one, two or three jurors that are standing out against the balance. I do not know which way it is.

(End of bench conference.)

The Court: You may retire to the jury room and I hope you will have a verdict very promptly.

(The jury retired to the jury room at 2:55 PM.)

(The jury returned to the court room at 2:58 PM and the following occurred in open court:)

The Court: You may proceed.

The Deputy Clerk: Mr. Foreman, has the jury reached a verdict?

The Foreman: We have.

The Deputy Clerk: On issue No. 2, namely, was the said paper writing dated the second day of February, 1954, obtained, or the execution thereof procured from the said Dorothy Smallwood Geare, deceased, by the undue influence or duress or coercion of Viola A. Hodson or any other person or persons?

The Foreman: The answer is no.

The Deputy Clerk: As to issue No. 3, namely, was the said paper writing dated the second day of February, 1954, revoked, by Dorothy Smallwood Geare, the deceased?

The Foreman: No.

The Deputy Clerk: Members of the jury your
59 foreman says that your answers to issues two and
three are "no" and that is your verdict, so say you each and all?

(The jury indicated that was their verdict.)